IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 777 of 1994
to
First Apeal No. 804 of 1994
with
Civil Application No. 1964 of 1995
to
Civil Application No. 1991 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SPECIAL LAND ACQUISITION OFFICER & ORS
Versus
RAVJIBHAI CHOTABHAI PATEL

Appearance:
MR AD OZA GOVERNMENT PLEADER for appellants
MR GM AMIN for Respondents

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 21/02/2002

COMMON ORAL JUDGEMENT

1. In this batch of 28 appeals which are filed under

section 54 of the Land Acquisition Act, 1894 ('the Act' for short) read with Section 96 of the Code of Civil Procedure, 1908 ('the Code' for short), appellants Special Land Acquisition Officer, Mahi Canal, Nadiad and Executive Engineer, Drainage Division, Nadiad, District Kheda have challenged the legality, validity and propriety of the common judgment and award dated February 26, 1992 rendered in a group of Land Acquisition Reference Case Nos. 519 of 1989 to 544 of 1989 and 204 and 205 of 1990 by the learned 2nd Extra Assistant Judge, Kheda at Nadiad by which he has determined the market value of the acquired land of the respondents/claimants at Rs.2480/- per Are and has an awarded additional compensation at the rate of Rs.2280 per Are after deducting Rs.200/- per Are determined and paid by the Special Land Acquisition Officer together with statutory benefits under Section 23 (I-A) and 23 (2) and interest under Section 28 of the Act.

2. As common question of law and facts are involved in these first appeals, I propose to dispose of these appeals by this common judgment.

3. Agricultural land of respondents/claimants situated at village Saloon, Taluka Nadiad, District Kheda came to be acquired for public purpose of Saloon-Kanjoda Canal Division 2 by issuing notification under Section 4 of the Act which came to be published on April 6, 1986. Thereafter various stages of the acquisition proceedings were followed. The Special Acquisition Officer who is appellant No.1 herein, in all the appeals after considering the objections with respect to determination of the market price raised by the claimants, determined the market value of the acquired land at Rs.200/- per Are as against the claim of the claimants at Rs.2500/- per Are, and awarded compensation at that rate together with the statutory benefits under the Act.

4. Aggrieved thereby respondents/claimants who are the owners of the land acquired sought references under section 18 of the Act before the Special Land Acquisition Officer who referred those references to the District Court, Kheda at Nadiad which were placed before the learned 2nd Extra Assistant Judge, Kheda at Nadiad for adjudication wherein also the compensation claimed by the claimants was Rs.2500/- per Are.

5. All the references were consolidated by the reference court and common evidence was recorded treating LAR Case No. 528 of 1989 as the main matter. On behalf of the claimants Jashbhai Udesinh, claimant of LAR Case

No.528 of 1989 was examined at Ex.44 who has testified about the location of the land and income derived from the land. On behalf of the claimants, documentary evidence were also produced and relied upon. The reference court after considering Exhs.42 and 43 which are judgments and awards in Land Acquisition Reference Case Nos. 209 of 1988 to 231 of 1988 and 12 of 1984 to 26 of 1984 wherein the reference court, that is, District Court, Kheda at Nadiad determined the market value of the acquired land at Rs.2640/- per Are and Rs.2000/- per Are respectively for the lands situated at Nadiad-Killedar Party, Taluka Nadiad, District Kheda and Bilodra, Taluka Nadiad, District Kheda, and on the basis of the said comparable rate, the learned 2nd Extra Assistant Judge determined the market value of the acquired land at Rs.2480/- per Are and after deducting Rs.200/- per Are determined and paid by the Special Land Acquisition Officer, awarded Rs.2280/- per Are as an additional compensation to the claimants together with the statutory benefits under the Act and interest thereon. It is this common judgment and award which has given rise to the present batch of appeals at the instance of the Special Land Acquisition Officer Mahi Canal, Nadiad and Executive Engineer, Drainage Division, Nadiad, District Kheda.

6. Mr. A.D. Oza, learned G.P. for the appellants contended that Ex.42 which is a copy of the judgment and award in LAR Case Nos.209 of 1988 to 231 of 1988 is concerned, therein notification under Section 4 of the Act was issued on August 13, 1986 whereas in the instant case notification under section 4 of the Act was issued on October 31, 1985, that is, one year earlier than that and therefore the determination of market value of the land acquired vide a judgment and award of the said LAR Case cannot be considered as a comparable rate for determining the market value of the acquired land for which references were sought and therefore the reference court fell in error in accepting the determination of market value in that LAR Cases which has resulted into miscarriage of justice. He has also contended that so far as the judgment and award rendered in LAR Case Nos.209 of 1988 to 231 of 1988 is concerned, those are in respect of the land situated at Nadiad Killedar Party which is in the town itself whereas the land for which the references were sought for is at Saloon village which is far away by 6 Kms. from Nadiad Killedar Party and therefore also the determination of market value of land acquired vide a judgment and award in that case cannot be taken as a comparable rate for determining the market value of the acquired land of village Saloon. He therefore urged that the impugned judgment and award is

required to be modified by reducing minimum Rs.400/- per Are. He therefore urged to allow these appeals.

7. Mr. G.M. Amin, learned advocate for the respondents/claimants contended that so far as the publication of notification under Section 4 of the Act with regard to acquired land is concerned, it is true that initially it was issued on October 31, 1985 but thereafter a corrigendum was issued on April 6, 1986 meaning thereby the actual notification under Section 4 of the Act came to be published on April 6, 1986. In LAR Case Nos. 209 of 1988 to 231 of 1988, the notification under Section 4 of the Act was issued on August 13, 1986 and therefore the reference court has very rightly relied upon the determination of the market value in that group of reference cases. Mr. Amin has also asserted that both the lands are situated in proximate distance as the distance between both the lands is negligible. The land of Nadiad Killedar Party is situated within the outskirts of the City and the village Saloon is also situated at the outskirts of the city limit and therefore the reference court has very rightly relied upon the judgment and award in LAR Case Nos.209 of 1988 to 231 of 1988 wherein the reference court has determined the market value of the acquired land at Rs.2640/- per Are. He therefore contended that the judgment and award passed by the reference court does not warrant any interference as the determination of the market value cannot be called excessive or on higher side but on the contrary it is based on the evidence on record. He therefore urged to dismiss the appeals.

8. I have considered the submissions advanced by Mr. A.D. Oza, learned GP for the appellants in all the appeals and Mr. G.M. Amin, learned advocate for respondents/claimants in all the appeals. I have also perused the memo of the appeals, grounds set out therein, the impugned judgment and award and also the copies of the evidence supplied by Mr. Amin during the course of his submissions.

9. There is no dispute that the land in question belonging to respondents/claimants came to be acquired for public purpose of Saloon-Kanjoda Canal, Division 2 by issuing notification under section 4 of the Act initially on October 31, 1985 and thereafter corrigendum came to be issued on April 6, 1986. Thereafter various stages of the acquisition proceedings were followed. The Special Land Acquisition Officer while giving award determined the market value of the acquired land at Rs.200/- per Are and therefore the claimants sought reference. The

reference court has determined the market value of the acquired land at Rs.2480/- per Are and paid additional amount of compensation of Rs.2280/- per Are together with statutory benefits and interest thereon under the Act.

10. On reanalysis, reappreciation and reassessment of the evidence adduced and produced before the reference court by the claimants, there is no manner of doubt that that reference court has relied upon Exhs. 42 and 43. So far as Ex.42 is concerned, it is a common judgment and award in LAR Case Nos. 209 of 1988 to 231 of 1988 wherein the market value of the acquired land was determined at Rs.2440/- per Are. So far as notification under Section 4 is concerned, it came to be issued on August 13, 1986. The said land is situated in Nadiad Killedar Party, Taluka Nadiad, District Kheda. It is true that the said land is situated within the municipal limit of Nadiad Municipality. But it is on the outskirts of municipal limit. Against this judgment and award, First Appeal Nos.873 of 1993 to 896 of 1993 were preferred by the State. The said batch of appeals was dismissed by Division Bench of this Court (Coram: M.B. Shah & J.M. Panchal, JJ.) on 16.8.1993 and thereby this Court has confirmed the judgment and award of the reference court rendered in LAR Case Nos. 209 of 1988 to 231 of 1988 wherein the market value of the acquired land was determined at Rs.2640/per Are. So far as the present group of appeals is concerned, the land is situated at village Saloon. There is no dispute that village Saloon is also situated adjoining to the outskirts of Nadiad town. Therefore, both the villages Saloon as well as Nadiad Killedar Party are adjoining to each other. Therefore, according to me, when the notification under Section 4 of the Act came to be issued proximate in time, the learned Judge has very rightly considered the market value determined by the reference court at Rs.2640/- per Are for the area of Nadiad Killedar Party and decided the market value of the land of village Saloon on lower side, that is, Rs.2480/- per Are instead of RS.2640/- per Are. Likewise, so far as Ex.43 is concerned, it is a common judgment and award in LAR case Nos.12 of 1984 to 26 of 1984 decided by the District Court, Kheda at Nadiad wherein also the reference court has determined the market value of the acquired land of Bilodra at Rs.2000 per Are for which notification came to be issued way back on April 5, 1979. The reference court has also considered the said judgment and award and determined the market value of the acquired land for which references were sought before him.

11. At this stage it would be appropriate to refer to

the judgment of the Supreme Court in the case of Thakarsibhai Devjibhai x. Executive Engineer, Gujarat, AIR 2001 SC 2424, wherein in para 12 the Supreme Court has observed as under:

> "As we have said above the High Court fell into error by reducing the quantum of compensation on this basis. The reduction has been made for two reasons, one that the present acquisition is of larger area and the second the distance between the land under acquisition and Ex.16 is about 5 kms. With reference to question of acquisition being of a larger area, the error is, when we scan we find for the acquisition of each land owner, it could not be said that the acquisition is of a large area. Largeness is merely when each land holders land is clubbed together then the area becomes large. Each landowners holdings are of small area. Even otherwise visioning in the line with submission for the State we find Ex.16 is about two hectares of land which cannot be said to be of small piece of land. So far the other question of distance between the two classes of lands, that by itself cannot derogate the claim of the claimant unless there are some such other materials to show that quality and potentiality of such land is inferior. However, distance between the land under Ex.16 and the present land even if they are 5 kms. apart would not be relevant, the relevancy could be, their distance from the Viramgam town. We find, as per map produced by the State the present acquired land is about 3 kms. away from it, while the land under Ex.16 is about two kilometers away from it. This difference is not such to lead to reduce the rate of compensation, specially on the facts of this case. In the present case, as we have recorded above, it has been found that the quality including potentiality of land between Exh.16 and the present one are similar. No evidence has been led on behalf of the State to find difference between the two. In view of this, the inference drawn by the High Court for reducing the compensation by Rs.10/- per sq.mtr. cannot be sustained."

In view of the ratio laid down by the Supreme Court in above referred to judgment, the contention advanced by Mr. Oza that as there is distance between the two lands, the reference court ought not to have relied upon the judgment and award in LAR Case Nos.209 of 1988 to 231 of

1988 produced at Ex.42 has no substance. Before the Supreme Court also similar was the question. While negativing the contention the Supreme Court held that the distance between similarly situated land and the presently acquired land is not a relevant factor.

12. In view of the aforesaid state of affairs, I am of the opinion that the reference court has very rightly determined the market value of the acquired land at Rs.2480/- per Are by placing reliance on the judgments and awards rendered in LAR Case Nos. 209 of 1988 to 231 of 1988 and 12 of 1984 to 26 of 1984 by the District Court, Kheda, copies whereof have been produced before the reference court at Exhs. 42 and 43 which are the lands situated proximate in distance and notification under section 4 of the Act came to be issued proximate in time as well and awarded additional compensation of Rs.2280/- per Are together with statutory benefits and interest thereon.

13. On overall view of the matter, I am of the opinion that no error is committed by the reference court in determining the market value of the acquired land at Rs.2480/- per Are on the basis of the comparable rate of the land situated in proximate distance of village Saloon and notification under section 4 of the Act came to be issued proximate in time as well and therefore all the appeals having been found meritless deserve to be dismissed by confirming the impugned common judgment and award of the reference court.

14. For the foregoing reasons all the appeals fail and accordingly they are dismissed with no order as to costs.

15. So far as the civil applications are concerned, vide order dated May 3, 1995 recorded by this Court execution and operation of the trial court's order is stayed subject to the condition that within six weeks from the said day the decretal amount alongwith interest will be deposited in the trial court. Mr. Oza, learned G.P. reported that pursuant to the said order the appellant has deposited the entire decretal amount with the trial court on November 8, 1993. Mr. Amin, learned advocate for the respondents/claimants states that out of the said amount deposited by the appellants, some amount has been withdrawn by the claimants and therefore it may be directed to the trial court that remaining amount if it is deposited in Fixed Deposit scheme same may be withdrawn and paid to the claimants.

16. In view of this, all the civil applications are disposed of with a direction that if any amount is deposited with any nationalized bank out of the amount deposited by the appellants, same may be paid to the claimants forthwith.

(A.M. Kapadia, J.)